

1 Did this inquiry arise in regard to an application that
2 Liberty felt should have been filed sometime in the summer
3 of '95?

4 A There were some questions like that going around,
5 yes.

6 Q But do you recall whether that application was in
7 any way related to the application in this proceeding?

8 A I don't recall. I mean, if you're referring to
9 four paths that Liberty thought had been filed, there was
10 some questioning going on about that, yes. But we -- we
11 determined that I never received the information from
12 COMSEARCH. Therefore, the applications couldn't have been
13 filed.

14 JUDGE SIPPEL: Are these paths that are in issue
15 in this case?

16 MR. HOLT: That's what I'm trying to determine,
17 Your Honor.

18 BY MR. HOLT:

19 Q Do you recall which paths --

20 A I don't recall specifically what paths those were,
21 no.

22 MR. BEGLEITER: Your Honor, we'll -- again, I'll
23 stipulate to that.

24 MR. HOLT: Okay.

25 MR. WEBER: Those are the four paths. The four

1 paths are among those paths that are in the HDO. And
2 they're all marked with an asterisk in Appendix A.

3 MR. BEGLEITER: Right. I mean, this has been the
4 subject of vast amounts of discovery.

5 JUDGE SIPPEL: All right. That is -- is that it,
6 Mr. Holt?

7 MR. HOLT: On that line, yes, Your Honor. If I
8 may, I could be wrapping up shortly.

9 JUDGE SIPPEL: Let's go off the record.
10 (Off the record.)

11 JUDGE SIPPEL: Okay. Back on the record.

12 MR. HOLT: Your Honor, this is my final line of
13 questioning. Can I confer with counsel for a brief moment?
14 I just --

15 JUDGE SIPPEL: I hope you're saving the good stuff
16 for the last. All right. We'll go off the record really
17 fast. Let's go.

18 (A discussion was held off the record.)

19 JUDGE SIPPEL: We're in recess until 10:55.

20 (Whereupon, a brief recess was taken.)

21 JUDGE SIPPEL: Back on the record. Mr. Holt?

22 MR. HOLT: Thank you, Your Honor.

23 BY MR. HOLT:

24 Q Mr. Lehmkuhl, during the period June 1994 through
25 July 1995, was -- to your knowledge, was Pepper & Corazzini

1 ever instructed by Liberty to audit its procedures for
2 ensuring that it did not commence operation about
3 authorization?

4 A No.

5 Q Was - to your knowledge, was Pepper & Corazzini
6 ever asked to audit Liberty's procedures for turning on
7 facilities -- turning on OFS paths for which it desired to
8 provide service?

9 A No.

10 Q So I take it that it was not up to Pepper &
11 Corazzini during that time period to devise a means for
12 monitoring Liberty's activation of OFS paths.

13 A That's correct.

14 Q Would you agree or disagree with the following
15 statement? "Pepper & Corazzini were the ones who possessed
16 the knowledge as to exactly what was correct with respect to
17 Liberty's operation of OFS paths."

18 JUDGE SIPPEL: I'm not going to --

19 MR. BEGLEITER: Objection, Your Honor.

20 JUDGE SIPPEL: It might have been David Letterman.
21 I don't know.

22 BY MR. HOLT:

23 Q Would you agree with the following statement --
24 agree or disagree with the following statement? "Liberty's
25 operation of OFS paths without authorization could not ever

1 have occurred if Pepper & Corazzini had done their job."

2 MR. BEGLEITER: I object, Your Honor.

3 MR. HOLT: Well, Your Honor, these are -- these
4 are statements that were made by a Witness in this
5 proceeding. And I'm asking this Witness to agree or
6 disagree with the accuracy of those statements.

7 JUDGE SIPPEL: It's an -- you know, it's an
8 abstract question. It's so -- it's so generic that whatever
9 his answer is, it isn't going to aid in the search for the
10 evidence that we're looking for in this proceeding. In
11 other words, it's going to be totally unreliable evidence.

12 BY MR. HOLT:

13 Q Mr. Lehmkuhl, do you believe that Pepper &
14 Corazzini during the period June 1994 through July 1995
15 failed to do anything that it was instructed to do by
16 Liberty that might have prevented the operation of
17 unauthorized OFS paths?

18 A No.

19 MR. HOLT: Your Honor, did you want to proceed
20 with questions regarding the document production now or how
21 did you want to handle that?

22 JUDGE SIPPEL: I want to have Mr. -- Mr. Weber --
23 if you're finished with your line of questioning on
24 everything but the documents, I'm going to ask Mr. Weber to
25 proceed with his portion.

1 MR. HOLT: I am, Your Honor. Thank you.

2 BY MR. WEBER:

3 Q Good morning, Mr. Lehmkuhl. As you know, I am
4 Joseph Weber and I represent the Wireless Telecommunications
5 Bureau. I'd like you to first turn to Exhibit 34 -- Time
6 Warner/Cablevision Exhibit 34 which is your April 28th, 1995
7 memo. Now, you've been deposed in this proceeding twice,
8 correct?

9 A That's correct.

10 Q Can you tell us why you never -- actually, in
11 either of those depositions, were you aware of the existence
12 of this particular memorandum, the April 28th memo, Exhibit
13 34?

14 A Not consciously, no.

15 Q Other than preparing licenses and STAs for Liberty
16 or on behalf of Liberty, what other type of paperwork did
17 you do for Liberty? What other things did you prepare?

18 A That was basically it, licenses and applications.

19 Q Now, we've also seen the February 24th memo which
20 is the license inventory and then this April 28th --

21 A Yes.

22 Q -- memo. Were there any other types of paperwork
23 you did for Liberty?

24 A What do you mean exactly? Do you mean beyond the
25 inventories?

1 Q Yes.

2 A No, not really.

3 Q So these two inventories were I guess you could
4 say out of the ordinary type of work you did for Liberty?

5 A No, they were related to the license and
6 application work that I did.

7 Q You -- did you in any way consider this April 28th
8 memo to be significant?

9 A When? Now or -- I'm sorry.

10 Q Well, even at the time. On April 28th, 1995.

11 A Yes, I think -- yes.

12 Q But then on -- on May 22nd, 1996, the first time
13 you were deposed, you -- you had no recollection of the
14 document?

15 A No. I mean, it as over, I don't know, a year and
16 a half or so. I mean, that's quite a while after.

17 Q In the statement you prepared for this proceeding
18 which has been admitted as Liberty/Bureau Exhibit Number 16,
19 you -- and it's -- a copy can be shown to you. I don't know
20 if you have a copy in front of you.

21 A No, I don't.

22 JUDGE SIPPEL: Can we get that? What's the number
23 on that?

24 MR. WEBER: 16, Your Honor.

25 JUDGE SIPPEL: All right. I'm going to pass over

1 the Reporter's -- one of the Reporter's copies on that
2 document. Well, that's his declaration.

3 MR. WEBER: Yes. This is his January 13th
4 declaration.

5 BY MR. WEBER:

6 Q You prepared this declaration?

7 A Yes, I did.

8 Q And that is your signature on the second page?

9 A Yes, it is.

10 Q In paragraph 8, you state that you were searching
11 files for a matter unrelated to this proceeding. Is it your
12 testimony then that -- that the April 28th memo was not
13 found while you were going through documents to prepare for
14 today's testimony?

15 A I was -- the document that I referred to or the
16 matter that I referred to was in preparation for today's
17 testimony. I was merely looking for a copy of a public
18 notice.

19 Q How were the files at Pepper & Corazzini kept? Do
20 you have a file room?

21 A Yes.

22 Q And then the -- the code for Liberty is 1808,
23 correct?

24 A That's correct.

25 Q Are all 1808 files in the same place in your file

1 room?

2 A Yes.

3 Q When in April of 1996 you received notice from Mr.
4 Spitzer to review documents for the Bureau's discovery
5 requests in this proceeding, did you go then into the file
6 room and go through all the 1808 files?

7 A Yes. Well, not -- in conjunction -- with other
8 people, yes.

9 Q And the other people -- was there just a paralegal
10 assisting you or were there more than that?

11 A A paralegal, assistant, myself and Mr. Barr.

12 Q Did each of you go through different parts of the
13 entire file?

14 A I believe so, yes.

15 Q In April of 1996, to your knowledge, was the April
16 28th, 1995 memo within those files at that time?

17 A Yes.

18 Q Do you know if it was in the group of files that
19 you personally looked through at that time?

20 A No, I don't recall.

21 Q I guess the same question for the February 4th,
22 1995 memo. Was it in the file room at that time?

23 A Yes.

24 Q And do you know if it was in the group of files
25 you personally looked through?

1 A I don't recall.

2 Q Is it your belief then that the reason it was not
3 initially turned over was a matter of oversight?

4 A Which one?

5 Q The -- oh, I'm sorry. The February -- or the
6 April 28th, 1995 memo.

7 A Yes.

8 Q How are the files in your file room arranged? Are
9 they chronological? Are they arranged by topic or are they
10 just put in in any order? Or is there a particular way that
11 they're -- they're arranged?

12 A There are a number of different files. But the
13 correspondence files are kept chronologically.

14 Q Is the April 28th memo a correspondence file?

15 A Yes.

16 Q Do you know who reviewed the correspondence files
17 as a part of the document request --

18 A Yes.

19 Q -- or were those -- and who reviewed them?

20 A Myself, a paralegal and Mr. Barr.

21 Q So the correspondence file was also divided up
22 among the three of you?

23 A Yes.

24 Q I'd like you to turn now to what has been marked
25 as Liberty/Bureau Exhibit 1 which is the February 24th memo.

1 And this is the first inventory of -- was this the first
2 inventory of Liberty licenses and paths?

3 A As I recall, there may have been one earlier, or
4 at least I may have started to prepare one earlier. But
5 this is -- this is probably the first one, yes.

6 Q And there was testimony yesterday that other
7 people in your firm had prepared inventories in the past,
8 correct?

9 A Yes.

10 Q And then you stated that you had made certain
11 changes. You added things, correct?

12 A That's correct.

13 Q Why did you make changes?

14 A I made changes because I felt the previous
15 inventories were inadequate. And it didn't include the
16 pending applications.

17 Q Did anybody ask you to make these changes?

18 A No.

19 Q Do you recall if you specifically informed Liberty
20 that you would be making that type of change?

21 A I may have.

22 Q You don't recall any specific conversations?

23 A No, no.

24 Q I'm going to ask you questions about how detailed,
25 if you know, your Pepper & Corazzini's billing is to

1 clients. When Pepper & Corazzini bills a client for your
2 time, do you know if it just specifies the number of hours
3 that you spent on preparing an application, or will it
4 actually give more detailed information which may include an
5 application file number and/or path?

6 A It's usually not my practice to include file
7 numbers in my -- in my descriptions of times just because
8 for someone reviewing the bill, it doesn't mean anything.

9 Q There is a fee associated with the filing of STAs,
10 correct?

11 A Yes.

12 Q And is that the \$45.00?

13 A No, it's -- well, yes. I think that's correct.

14 Q And that money, obviously, would be billed to the
15 client?

16 A With Liberty, we had an arrangement early on where
17 the client prepaid for those filing fees. It was a separate
18 account.

19 Q So a bill would not be sent to Liberty showing
20 that -- or were invoices then sent to Liberty showing that
21 money was being taken out of that prepaid account to pay for
22 --

23 A I don't know.

24 Q You don't know. Yesterday there was a lot of
25 discussion about the emission designator problem. When you

1 were discussing this with Mr. Nourain, did the topic that
2 these applications that had the emission designator problem
3 had not been granted ever come up?

4 A Could you ask that again? I wasn't quite clear.

5 Q When you were discussing the emission designator
6 problem with Mr. Nourain, did the topic that all the
7 applications that had the emission designator problem had
8 not been -- that the fact that those applications hadn't
9 been granted because of the emission designator problem, did
10 that come up?

11 A I don't recall specifically.

12 Q Now, since there was an emission designator
13 problem, would it have been possible for the Commission to
14 go ahead and grant the applications with that type of
15 problem?

16 A As I was informed later, no.

17 Q And this is actually an engineering type of
18 problem, correct?

19 A Yes.

20 Q And as far as you know -- well, to your knowledge,
21 is that the type of thing that Mr. Nourain would have
22 understood?

23 A It's hard to really know exactly what he
24 understood. It's possible, but I don't know.

25 Q In your conversations with him, did he seem to at

1 least grasp the significance of the emission designator
2 problem?

3 A The problem being that the emission designators
4 were wrong?

5 Q Yes.

6 A Yes.

7 Q Now, you stated you learned of the premature
8 operations in May of 1995, correct?

9 A Yes.

10 Q So it is your -- well, we do have testimony that
11 Liberty officials learned in April of '95. Is it your
12 testimony then that nobody from Liberty contacted you to
13 inform you that -- that there were premature operations?

14 A No one contacted me specifically, no.

15 Q Do you know if Mr. Barr was ever contacted by
16 anybody at Liberty?

17 A I don't know.

18 Q Where is your office in relation to Mr. Barr's?

19 A Down the hall. Maybe six or seven offices away --
20 five or six.

21 Q Is Pepper & Corazzini organized so that Mr. Barr
22 is the primary partner you work for -- the primary other
23 attorney you work for or do you also do work for all the
24 other partners and attorneys at the firm?

25 A It's -- it varies on the situation. At this time,

1 Mr. Barr was not a partner.

2 JUDGE SIPPEL: When you say at this time, what do
3 you mean by at this time?

4 THE WITNESS: I'm assuming you're referring to
5 January '94 through April -- or April or May of '95?

6 BY MR. WEBER:

7 Q That's correct. Was Mr. Barr at that time period
8 the primary attorney that supervised your work?

9 A On the whole -- well, yes.

10 JUDGE SIPPEL: Who brought the Liberty account to
11 the firm?

12 THE WITNESS: I believe that was someone by the
13 name of Todd Parriott who had worked there long before I had
14 gotten there.

15 JUDGE SIPPEL: But he was gone?

16 THE WITNESS: Yes.

17 BY MR. WEBER:

18 Q Do you and Mr. Barr have access to the same
19 databases on the computer?

20 JUDGE SIPPEL: Mr. Spitzer?

21 MR. SPITZER: Your Honor, could I suggest for a
22 moment that we excuse the Witness so I can put something on
23 the record that may assist Mr. Weber in this line of inquiry
24 and it may prevent the necessity of pursuing certain issues?
25 I think it should certainly be said outside the presence of

1 the Witness.

2 JUDGE SIPPEL: All right. We'll go off the
3 record. Would you excuse us for a second?

4 (Whereupon, the Witness was excused from the
5 courtroom.)

6 JUDGE SIPPEL: Back on the record.

7 MR. SPITZER: Your Honor, I may be wrong, Your
8 Honor, that Mr. Weber is trying to determine whether there
9 was somebody else at the firm of Pepper & Corazzini who had
10 the knowledge prior to Mr. Weber's knowledge on May the 5th
11 or --

12 MR. BEGLEITER: Mr. Lehmkuhl's knowledge.

13 JUDGE SIPPEL: You mean Mr. Lehmkuhl.

14 MR. SPITZER: Mr. Lehmkuhl, I'm sorry. But there
15 will be testimony elicited, Your Honor, which will indicate
16 that the firm did have such knowledge prior to Mr.
17 Lehmkuhl's having that knowledge at the end of May -- end of
18 April.

19 JUDGE SIPPEL: Where was -- the testimony will be
20 elicited through this Witness?

21 MR. SPITZER: No, no. No, Your Honor. Through
22 Mr. Price. And it will -- it will be an indication that Mr.
23 Barr did have that knowledge.

24 JUDGE SIPPEL: And are you prepared to say what --
25 you know, what date or approximate time frame that you're

1 referring to?

2 MR. SPITZER: It is our belief -- the best
3 recollection, the 27th.

4 JUDGE SIPPEL: Of?

5 MR. SPITZER: Of April.

6 JUDGE SIPPEL: That it was communicated from --

7 MR. SPITZER: That this --

8 JUDGE SIPPEL: -- Liberty to Mr. Barr.

9 MR. SPITZER: I would not say communicated to is
10 entirely correct. I would say that it emerged in the course
11 of a conversation when pieces will fit together.

12 JUDGE SIPPEL: That was --

13 MR. SPITZER: I offer this only because I -- I'm
14 attempting to assist you in your inquiry.

15 MR. WEBER: Well, no, and I thank you for that,
16 Mr. Spitzer. I mean, finding out whether anybody knew in
17 advance of Mr. Lehmkuhl knowing at the Pepper & Corazzini
18 firm was only part of the reason for this inquiry. The
19 other part had to do with whether or not it would be
20 necessary to call Mr. Barr as a witness. And based upon
21 that statement, that maybe Mr. Barr did know in April, it
22 may make it unavoidable unfortunately to call Mr. Barr.
23 There may be a need for us to seriously consider doing that.

24 MR. SPITZER: We may have reached that same
25 conclusion. I use the word, may, so as not to necessarily

1 lock ourselves in. But I -- I'm not disagreeing with the
2 general tenor of Mr. Weber's statement.

3 JUDGE SIPPEL: I don't have to disclose my hand
4 yet, right? Okay. Thank you very much, Mr. Spitzer. I
5 think we should bring the Witness back in now. Off the
6 record.

7 (Whereupon, the Witness returned to the
8 courtroom.)

9 JUDGE SIPPEL: Back on the record. We discussed
10 while you were out of the courtroom the information that --
11 that will -- Mr. Spitzer represents will be coming into the
12 record with a subsequent witness. And it is probably
13 information that -- I don't know whether or not -- would he
14 be privy to this information?

15 MR. BEGLEITER: Well, he's already testified that
16 he was -- he's testified that he --

17 MR. SPITZER: Well, he was not aware as of a
18 certain date. Is he privy to the fact that somebody else
19 will testify that he knew earlier? I -- I'm not sure, Your
20 Honor, because we have tried very hard to keep the witnesses
21 apart on this issue.

22 JUDGE SIPPEL: All right. It's -- I just want --
23 I just want you to be aware in general of what we were
24 talking about while you were outside of the room. It
25 shouldn't impact at all what you have testified to as far as

1 your testifying and your knowledge is concerned. And I
2 don't think it's going to effect -- well, I'll let Mr. Weber
3 proceed with his examination.

4 BY MR. WEBER:

5 Q You stated yesterday that Mr. Nourain occasionally
6 expressed some urgency on an application?

7 A Yes.

8 Q What did Mr. Nourain in these instances say to you
9 which to you showed his expression of an urgency?

10 A Well, he would -- he would call and ask for the
11 status of -- of an application and ask me if I had received
12 it from COMSEARCH yet and that type of thing. So I mean it
13 wasn't stated like -- wasn't explicitly stated. It was more
14 implicit.

15 Q Did he ever express the need to get service to
16 their customers?

17 A I suppose in a general sense he may have.

18 Q And did he ever express any of this type of
19 urgency in the time period of January through April of 1995?

20 A Well, yes. I mean, in April.

21 Q Prior to that long conversation which was
22 discussed a lot yesterday which -- which I assume was what
23 led to the May 4th STAs. Did he express any urgency between
24 January and that particular April conversation?

25 A Not particularly that I recall. I mean, we had a

1 few conversations on the -- on the status of the licenses,
2 but not with any particularity.

3 Q Now, after you learned in May of 1995 that some
4 Liberty paths were activated without authorization, did you
5 consider checking before making any new filings whether or
6 not that particular path was in operation?

7 A Was in operation? No.

8 Q Is Liberty paying you your hourly rate for your
9 time here today?

10 A I believe so, yes.

11 Q And is Mr. Gutmann's hourly rate being picked up
12 by Liberty, as well?

13 A I'm not sure. I believe so, but I don't know.

14 JUDGE SIPPEL: Is that true, Mr. Gutmann?

15 MR. GUTMANN: To be quite honest, I'm not sure
16 either.

17 JUDGE SIPPEL: All right. One at a time. Our
18 sound system isn't quite that perfect.

19 BY MR. WEBER:

20 Q Now, I would like to turn to Time
21 Warner/Cablevision Exhibit Number 24. Now, my notes may be
22 incorrect, but I believe you said yesterday that you
23 received a copy of this from Liberty, is that correct?

24 A Yes.

25 Q Do you know if that is still in your files?

1 A I don't know.

2 JUDGE SIPPEL: So that I -- I just want to get the
3 record focused on this. This is the document that's called,
4 "Activated Buildings with Flawed Licenses."

5 MR. WEBER: That's correct, Your Honor. Thank
6 you.

7 JUDGE SIPPEL: Thank you.

8 BY MR. WEBER:

9 Q And do you know if that was -- a copy from your
10 office files was produced as a part of discovery?

11 A I don't know.

12 MR. WEBER: Thank you. That completes the
13 Bureau's inquiry.

14 JUDGE SIPPEL: Let me -- to leave it fresh in my
15 mind, let me just clear up a little something here. How --
16 how long did you spend searching the files back in April?

17 THE WITNESS: It was just a few days. It was a
18 very short period of time. I don't recall exactly how many
19 days, but I think maybe one or two.

20 JUDGE SIPPEL: One or two days?

21 THE WITNESS: Right. We had -- we had to get this
22 to Constantine & Partners as soon as possible.

23 JUDGE SIPPEL: Were you at it all day both days?

24 THE WITNESS: I think so. Not me personally.

25 JUDGE SIPPEL: How long were you personally doing

1 it -- searching for documents?

2 THE WITNESS: Maybe for, I don't know, three-
3 quarters -- three-quarters of the day.

4 JUDGE SIPPEL: For both days?

5 THE WITNESS: A total of about maybe one day. I
6 didn't work on it the entire two days myself.

7 JUDGE SIPPEL: What -- who was -- well, who was
8 working in your place, the paralegal?

9 THE WITNESS: Yes.

10 JUDGE SIPPEL: And was there -- was there any kind
11 of a double-check? I mean, like did you look through the
12 stuff that Mr. Barr looked at and he looked through the
13 stuff that you looked at to be sure that nothing got missed
14 or anything like that?

15 THE WITNESS: Yes, I looked through the stuff that
16 the paralegal had done and then went to Mr. Barr.

17 JUDGE SIPPEL: So there was some -- some kind of
18 double overlap.

19 THE WITNESS: Yes.

20 JUDGE SIPPEL: Do you feel confident that there
21 was -- that there has been now a full and complete review of
22 all the records --

23 THE WITNESS: Yes.

24 JUDGE SIPPEL: -- for relevant evidence in this
25 case?

1 THE WITNESS: Yes, I do.

2 JUDGE SIPPEL: You were certainly know what is
3 relevant evidence.

4 THE WITNESS: Yes, now.

5 JUDGE SIPPEL: And you feel that we can -- that I
6 can be confident that as far as your firm's records are
7 concerned, that we have it all?

8 THE WITNESS: Yes.

9 JUDGE SIPPEL: Okay. Who wants -- do you want to
10 redirect before we go into the further questions on the
11 documents?

12 MR. BEGLEITER: Why don't I -- I'd rather be
13 clean-up, Your Honor, so I'd rather --

14 JUDGE SIPPEL: All right. Anyone have anything
15 more to ask about the documents? Mr. Beckner?

16 MR. HOLT: Well, I do, as well, Your Honor. But
17 I'd like Mr. Beckner to start first.

18 JUDGE SIPPEL: All right.

19 MR. BECKNER: Just a few questions, Your Honor.

20 JUDGE SIPPEL: All right.

21 BY MR. BECKNER:

22 Q Mr. Lehmkuhl, when you and your colleagues were
23 doing your search of your firm's files, did you make any
24 attempt to distinguish between documents that might be
25 responsive but were protected under a claim of privilege or

1 did you just grab everything that appeared to be responsive?

2 A I don't recall. I believe we made a -- we made
3 a -- we -- we casted a wide net at one point.

4 Q Well, I'm not sure you answered the question. Let
5 me just state it a different way. Did you attempt to
6 segregate from the files that you pulled that were --
7 appeared to be responsive to the request, did you appear to
8 segregate from that group of documents, documents that you
9 believed were subject to being withheld under a claim of
10 attorney-client or work product privilege?

11 A I don't recall. That may have been the case.

12 Q Well, with respect to the documents that you
13 segregated out under a claim of privilege, did you send
14 those documents up to the Constantine firm in New York or
15 did you just keep them?

16 A I don't recall. I don't recall specifically.

17 Q Do you know who was -- as between yourself and the
18 other people who were involved in the document review at
19 your firm, who was making the decision about whether or not
20 a responsive document was or was not subject to a claim of
21 privilege?

22 A That would have been myself and Mr. Barr,
23 primarily Mr. Barr.

24 Q So I take it from your testimony that there may be
25 somewhere in your firm a collection of documents that you

1 found that were responsive but were not sent up to New York
2 to the Constantine firm because you believed that they were
3 subject to a claim of privilege.

4 A You mean as of now?

5 Q As of now.

6 A No.

7 Q Okay.

8 A That's not the case.

9 Q Can you tell me why the time of my question makes
10 a difference in your answer, if it does?

11 A As I recall, there were other documents that we
12 had produced earlier, the inventories and that type of
13 thing.

14 Q Okay. And that's -- for example, you're referring
15 to Liberty/Bureau Exhibit 1 in the notebook, the February
16 24th inventory?

17 A Yes.

18 Q Okay. And the other older inventories that were
19 produced at the same time as that one?

20 A Yes.

21 Q Okay. Did those documents come out of a privilege
22 file that was in the -- in your firm's possession?

23 A I believe so, yes.

24 Q Are you satisfied then that to the best of your
25 knowledge, whatever privilege file of documents that was set

1 aside when you did your initial review, that someone has
2 gone through them recently?

3 A Absolutely.

4 Q Okay. Are you aware of the fact that a -- that
5 privileged document index or a log was generated by -- by
6 Liberty in this case?

7 A Yes, I am.

8 Q Okay. Do you know whether or not that privileged
9 document log captures all of the documents that your firm
10 had set aside under a claim of privilege that were not
11 ultimately produced?

12 A I haven't seen that log, but I have to assume it
13 does.

14 Q All right. Do you know if anybody, you know, made
15 a review of a comparison of the log with what was in your
16 privileged file that wasn't produced?

17 A I don't know.

18 Q All right.

19 MR. HOLT: Well, perhaps we can ask counsel
20 whether they know if that sort of a comparison was done.

21 MR. SPITZER: Your Honor, I'm happy to try to
22 explain this, but I'm not sure it should be done in front of
23 this Witness.

24 JUDGE SIPPEL: Yes, I --

25 MR. SPITZER: I mean, I'm happy to explain some of